Supreme Court, U.S.
FILED
DEC 23 1991
OFFICE OF THE CLERK

No. 91-1224

IN THE SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM 1991

PATRICIA ANN OUZTS,

Petitioner,

v.

THE STATE OF SOUTH CAROLINA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

C. RAUCH WISE
Wise & Tunstall
408 Main Street
Greenwood, SC 29646

JOHN M. YOUNG*
Attorney At Law
1105 Hampton Street
Suite 2000
Columbia, SC 29202

Attorneys for Petitioner

*Counsel of Record

QUESTION PRESENTED

1. Did the South Carolina Supreme Court err in holding that the marijuana seized from the trunk of the petitioner's automobile was lawfully seized when the automobile was parked on a public street and the search warrant used to justify the search of the automobile did not name the petitioner nor describe the petitioner's automobile.

PARTIES TO THE PROCEEDINGS

The parties to the proceeding are listed in the caption.

TABLE OF CONTENTS

Questions Presented. i

Parties to the Proceedings ii

Table of Contents. iii

Table of Authorities iv

Opinion Below. 1

Jurisdiction 2

Statement of the Case. 2

Reasons for Granting the Writ. 4

Conclusion 9

TABLE OF AUTHORITIES

Cases:

United States v. Asselin, 775 F.2d 445 (1st Cir. 1985) 8

United States v. Di Re, 332 U.S. 581 (1948) 6

United States v. Gottschalk, 915 F.2d 1459 (10th Cir. 1990) 5

United States v. Napoli, 530 F.2d 1198 (5th Cir. 1976) 9

United States v. Percival, 756 F.2d 600, 612 (7th Cir. 1985) 5

United States v. Stanley, 597 U.S. 866 (4th Cir. 1979) 4

Ybarra v. Illinois, 444 U.S. 85 (1979) 7

Statutes:

28 U.S.C. § 1257 2

Constitutional Provisions:

Fourth Amendment. 6

IN THE SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM 1991

PATRICIA ANN OUZTS,

Petitioner,

v.

THE STATE OF SOUTH CAROLINA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF
THE STATE OF SOUTH CAROLINA

Petitioner, Patricia Ann Ouzts, respectfully prays that a writ of certiorari be issued to review the judgment of the Supreme Court of the State of South Carolina entered on August 19, 1991.

OPINION BELOW

The decision of the Supreme Court of the State of South

Carolina is not reported. It is reprinted at Appendix A at page 1. The Order denying a rehearing is reprinted at Appendix B at page 3.

JURISDICTION

The judgment of the Supreme Court of the State of South Carolina was entered on August 19, 1991 and a timely petition for rehearing was denied on September 23, 1991. The jurisdiction of this Court arises under 28 U.S.C. § 1257(a).

STATEMENT OF THE CASE

The petitioner was arrested on November 30, 1989 when approximately one pound of marijuana was found in her automobile. The automobile was searched pursuant to a search warrant issued on November 24, 1989. At the time of the search the automobile was parked on a public street near the residence that was named in the search warrant. The search warrant did not describe the automobile of the petitioner. The search warrant authorized a search of "the residence occupied by 'Butch' being located on the corner of E. Cambridge St. and Willowdale Ct. [and] any and all vehicles owned or operated by 'Butch' or occupants of above." Tr. at 116. The information supplied by the confidential informant in the search warrant did not provide

any information that marijuana would be found in any automobile and therefore did not name the automobile of the petitioner.

Six days prior to executing the search warrant, Officer Doug Gunter had received information that the petitioner was carrying marijuana to work, but did not have information that she was carrying the marijuana in the automobile that was searched. Tr. at 17, ll 5-19 and Tr. at 18, ll 7-18. Prior to executing the search warrant, Officer Gunter had the petitioner's name, address, and a description of her automobile. None of this information was provided to the magistrate to be included in the search warrant. Tr. at 16, ll 11-25 to 17, l 1.

During the search of the petitioner's automobile, the marijuana was found in a blue athletic bag locked in the trunk of the automobile.

The South Carolina Supreme Court affirmed the conviction of the petitioner on August 19, 1991. A petition for re-hearing was denied on September 23 ,1991.

The petitioner raised the question of the constitutionality of the search on page 32 and 33 of the transcript of record. That portion of the transcript is reprinted at Appendix C at pages 4,

5 and 6.

REASONS FOR GRANTING THE WRIT

A. A conflict exists between the decision of the South Carolina Supreme Court in this case and the United States Court of Appeals for the Fourth Circuit.

When the South Carolina Supreme Court upheld the search of the automobile of the petitioner in this case, it rendered a decision that is in conflict with the United States Court of Appeals for the Fourth Circuit. In a strikingly similar case, the Fourth Circuit Court of Appeals in *United States v. Stanley*, 597 U.S. 866 (4th Cir. 1979) held that a search warrant for a residence did not authorize the search of an automobile parked in a common parking lot even though the automobile was owned by the occupant of the residence to be searched. The Fourth Circuit held "that the common area parking lot on which Stanley's automobile was parked was not within the curtilage of his mobile home." *Id.* at 870. The search warrant is valid only for the premises and areas within the curtilage.

In the present case, the facts are even stronger that the search of the petitioner's automobile was not proper when her car was parked on a public street and she was not named as an

"occupant" in the search warrant. The petitioner had a reasonable expectation of privacy in her automobile.

Most circuits that have addressed the issue have held that a search of automobile pursuant to a search warrant for a premises is limited to "any vehicles located within its *curtilage* if the objects of the search might be located therein." *United States v. Gottschalk*, 915 F.2d 1459 (10th Cir. 1990). *See, also, United States v. Asselin*, 775 F.2d 445 (1st Cir. 1985); *United States v. Napoli*, 530 F.2d 1198 (5th Cir. 1976). The Seventh Circuit has placed an additional requirement that the automobile sought to be searched "must be owned or controlled by the owner of the premises to be searched . . . ." *United States v. Percival*, 756 F.2d 600, 612 (7th Cir. 1985). Thus, if the petitioner's case had arisen in the First, Fifth or Tenth Circuits the evidence would have been suppressed because the automobile was not on the premises to be searched. In the Seventh Circuit the evidence would have been suppressed because the automobile sought to be searched was not owned or controlled by "Butch."

B. The South Carolina Supreme Court erred in allowing the search of the petitioner's automobile which was parked on a public street, but was not named in the search warrant.

One of the reasons for the warrant requirement of the Fourth Amendment is to prohibit the issuance of a general warrant. By allowing the search of the petitioner's automobile, the South Carolina Supreme Court has in essence authorized the issuance of a general warrant. The search warrant did not contain sufficient information to authorize the search of the petitioner's automobile. Unless Doug Gunter, the officer who obtained the warrant, were executing it, an officer would not know if the automobile of the petitioner would be included in the search warrant. The bounds of the search warrant should be set forth in the search warrant, not left to be determined by the officer executing the warrant.

One of the purposes of the Fourth Amendment is to prevent the issuance of a general warrant. To allow an officer to search an automobile not named in the warrant which is parked on a public road, is to allow general warrants.

This Court has long recognized that the mere fact that a person is on the premises to be searched does not justify a search of that person without probable cause. In *United States v. Di Re*, 332 U.S. 581 (1948) this court refused to allow the search of a passenger in an automobile when there was probable

cause to search the automobile. In that case this Court noted that "[t]he Government says it would not contend that, armed with a search warrant for a residence only, it could search all persons found in it." *Id.* at 586.

This Court has also held that the search warrant for a tavern does not include the right to search a customer in the tavern who was not named in the search warrant. *Ybarra v. Illinois*, 444 U.S. 85 (1979). In the present case, neither the petitioner nor her automobile was named in the search warrant. The search warrant can not be expanded by the officer executing the warrant to include either the petitioner or her automobile, particularly when the automobile is parked on a public street.

Surely the search warrant in the present case could not be used to justify a search of the petitioner's automobile parked two miles from the residence of "Butch." As far as the constitution is concerned, it does not matter if the petitioner's automobile is parked two feet or two mile off the premises so long as it is off the premises.

Too often this and other courts are criticized for drawing vague lines in search and seizure cases. The rule in this case is quit simple and easy. If an automobile is found on a public

street, then a warrant is needed to search it unless it comes within one of the exceptions to the warrant requirement. No such exception exists in this case.

COUNCLUSION

This Court should grant the Writ of Certoirari to eliminate the conflict between the Fourth Circuit and the South Carolina Supreme Court.

Respectfully submitted,

C. RAUCH WISE
Wise & Tunstall
408 Main Street
Greenwood, SC 29646

JOHN M. YOUNG*
Attorney At Law
1105 Hampton Street
Suite 2000
Columbia, SC 29201

*Counsel of record

No. _____

IN THE SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM 1991

PATRICIA ANN OUZTS,

Petitioner,

v.

THE STATE OF SOUTH CAROLINA,

Respondent.

APPENDIX
PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

C. RAUCH WISE
Wise & Tunstall
408 Main Street
Greenwood, SC 29646

JOHN M. YOUNG*
Attorney At Law
1105 Hampton Street
Suite 2000
Columbia, SC 29202

Attorneys for Petitioner

*Counsel of Record

APPENDIX A

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State,

Respondent,

v.

Patricia Ann Ouzts,

Appellant.

Appeal From Greenwood County
James E. Moore, Judge

Memorandum Opinion No. 91-MO-237
Submitted May 16, 1991 - Filed August 19, 1991

AFFIRMED

C. Rauch Wise, of Wise & Tunstall, of Greenwood for appellant.

Attorney General T. Travis Medlock, Assistant Attorneys General Harold M. Coombs, Jr., and Amie L. Clifford, ail of Columbia; and Solicitor W. Townes Jones, IV, of Greenwood, for respondent.

PER CURIAM: Affirmed pursuant to Supreme Court Rule 23 adn the following authorities: Exceptions 1-4: *State* v.

Dean, 282 S.C. 135, 317 S.E.2d 744 (1984); *California v. Carney*, 471 U.S. 386, 105 S.Ct. 2066, 85 L.Ed.2d 406 (1985); Exceptions 5 and 6: *State v. Bailey*, 253 S.C. 304, 170 S.E.2d 376 (1969) (general objection preserves nothing for appellate review); *State v. Sinclair*, 275 S.C. 608, 274 S.E.2d 411 (1981) (where received all the relief requested below, nothing preseved for review); Exceptions 7 and 8: *State v. Neva*, 300 S.C. 450, 388 S.E.2d 796 (1990).

APPENDIX B

C. Rauch Wise, Esquire
408 Main Street
Greenwood, Sc 29646

Re: The State v. Patricia Ann Ouzts

Dear Mr. Wise:

The Court has refused your Petition for Rehearing in the above case in the following order:

"Petition for Rehearing
denied.

s/George T. Gregory, Jr. C.J.
s/David W. Harwell A.J.
s/A. Lee Chandler A.J.
s/Ernest A. Finney, Jr. A.J.
s/Jean H. Toal A.J.

September 23, 1991."

The remittitur in this matter is today being forwarded to the Clerk of Court for Greenwood County.

Sincerely yours,

CLERK

CND,Jr./dmh

cc: The Honorable Amie L. Clifford

keys. They Didn't ask. They said -- let me see if I remember exactly how they put it. It was like, "we need to " -- "We need to search the car ."

The Court: They said, "we need to search the case"?

The Witness: Un-huh.

The Court: And you gave then the keys?

The Witness: I didn't have no other choice.

The Court: Thank you. Step down.

Mr. Wise: I do have some authority for the court. I would first refer the court to a quote from *Steele v. United States*, which is 267 U.S. 498, and quoted in *Hanger v. U.S.*, and it says, "It is enough if the description is such that officers with a search warrant can with reasonable effort ascertain and identify the place," and then they put in parentheses, "Authomobile intended." Nothing in this warrant could ever indicate the automobile as intended.

Then in *U.S. v. Percival* it says, "Therefore, we agree with the other courts that have addressed this issue and hold that a search warrant authorizing a search of a particularly described premises may permit the search of vehicles owned or controlled

by the premises and, "and emphasis is on the "and," "found on the premises."

That leads us to *U.S. v. Stanley*, which is a case by the fourth circuit court of appeals in which they held this: "We hold that the common area parking lot" -- and this was under a search warrant to search the defendant stanley's residence and curtilages and automobiles and so forth -- "We hold that the common area parking lot on which Stanleys' automobile was parked was not within th ecurtilage of his mobile home," so therefore they were not allowed to search that car outside the curtilage of the mobile home, even if it does come under the cars ofthe occupants.

Her car was on a public road, was not on the premises of this particular house; therefore, they would need a search warrant for this particular car in order to search it. The testimony clearly shows there was no probable cause to search her case. He had no information to believe that this car carried marijuana. He had no information to believe that there was marijuana in the trunk or anywhere on that.

He also had information that she was not a resident there. Her driver's license I.D. came back that she was living elsewhere, and therefore I think it's improper to conclude merely

from the fact that she had been seen there on several occasions that she as an occupant of the premises. He took no efforts to